

## Calendar No. 28

108TH CONGRESS }  
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SENATE

{ REPORT  
108-16

### BLUNT RESERVOIR AND PIERRE CANAL LAND CONVEYANCE ACT OF 2003

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MARCH 5, 2003.—Ordered to be printed

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Mr. DOMENICI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 426]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 426) to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 426 is to authorize the conveyance of approximately 19,200 acres of Federal land in South Dakota administered by the Bureau of Reclamation that were never used for the proposed Blunt Reservoir. The lands would be conveyed back to the original land owners or their descendants, or to the State of South Dakota for the mitigation of lost wildlife habitat.

#### BACKGROUND AND NEED

S. 426 is the product of more than four years of discussion with local landowners, the South Dakota Water Congress, the Bureau of Reclamation, local legislators, representatives of South Dakota sportsmen groups, and other affected citizens.

The Oahe Unit was originally approved as part of an overall plan or water development in the Missouri River Basin that was incor-

porated in the Floor Control Act of 1944. The initial stage of the project included a system of main canals, such as the Pierre Canal, running east from the Oahe Reservoir, and the establishment of regulating reservoirs, including the Blunt Dam and reservoir, located approximately 35 miles east of Pierre, South Dakota.

A total of 17,878 acres of land was acquired from willing sellers for the proposed Blunt Reservoir feature during the 1970's. More than 1,300 acres of additional land was acquired for the Pierre Canal feature.

After the growth of opposition to the project, construction on the Oahe unit was halted on September 30, 1977. Congress did not provide funds for the project in the fiscal year 1978.

In response to this situation, the Bureau of Reclamation gave to those persons who had willingly sold their lands to the project, and their descendants, the right to lease those lands and use them as they had in the past until they were needed by the Federal Government for project purposes. Since 1978, the Bureau of Reclamation has administered these lands on a preference lease basis for original landowners or their descendants and on a non-preferential basis for lands under lease to persons who had not previously owned or controlled the land.

Currently, the Bureau of Reclamation administers approximately 13,000 acres as preferential leases in Blunt Reservoir, and administers approximately 1,100 acres of preferential leases in the Pierre Canal feature. The Bureau also administers approximately 5,000 acres of non-preferential leases at the two features. The lands are not in their original condition. Various stockpiled materials, fences, access roads, road detours, and other items left by the Bureau remain on the land.

The Oahe project was a part of the overall Pick-Sloan Missouri Basin program, which included four major dams across the Missouri River that caused the loss of approximately 221,000 acres of fertile, wooded bottomland that was productive wildlife habitat.

Under the provisions of the Wildlife Coordination Act of 1958, the State of South Dakota has developed a plan to mitigate a part of this lost wildlife habitat. The transfer of non-preferential lease lands in the Blunt Reservoir feature to the South Dakota Department of Game, Fish and Parks would satisfy, in part, this habitat mitigation obligation.

Enactment of this measure would provide important habitat for wildlife and equitably address the effects of this project on original landowners and their descendants.

#### LEGISLATIVE HISTORY

S. 426 was introduced by Senator Daschle on February 14, 2003. Similar legislation, S. 1028, was introduced by Senators Daschle and Johnson in the 107th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 1028 on November 27, 2001, and ordered the bill favorably reported, with an amendment in the nature of a substitute, on July 31, 2002. The text of S. 1028, as amended, was adopted by the Senate as part of an amendment to S. 2222, which passed the Senate by unanimous consent on November 19, 2002. At the business meeting on February 26, 2003, the Committee on Energy and Natural Resources ordered S. 426, favorably reported.

## COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on February 26, 2003, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 426 as described herein.

## SECTION-BY-SECTION ANALYSIS

*Section 1* entitles the Act the “Blunt Reservoir and Pierre Canal Land Conveyance Act of 2002.”

*Section 2* (a) defines key terms used in the Act.

Subsection (b) deauthorizes the Blunt Reservoir feature of the Oahe Irrigation Project.

Subsection (c) requires the State of South Dakota to accept land conveyed to it under the bill in “as is” condition, assume responsibility for any outstanding liabilities, and recognize any outstanding obligations associated with expired easements or other rights granted to either feature. The conveyances to the State shall also be subject to the reservations by the United States and the conditions specified in section 667b of title 16, United States Code, for transfer of property to State agencies for wildlife conservation purposes. The conveyances shall be subject to the reservation by the United States of all oil, gas, and mineral rights, to the condition that the property continue to be used for wildlife conservation and to a requirement that in the event it is no longer used for such purposes, or in the event it is needed for national defense purposes, title shall revert to the United States.

Subsection (d) allows the preferential leaseholders (original landowners or descendants, or operators of the land at the time of purchase) an option to purchase the land they lease within 5 years of enactment. Any purchases shall be from the South Dakota Commission of Schools and Public Lands (“Commission”), acting as an agent for the Secretary of the Interior. The leaseholders would have the option of paying cash and receiving a 10 percent discount on the land’s value, or receiving a 30-year mortgage at 3 percent annual interest.

If the preferential leaseholder fails to purchase a parcel within the 5-year period, that parcel would be conveyed to the South Dakota Department of Game, Fish, and Parks to assist in the implementation of the wildlife habitat mitigation plan.

Proceeds of the sales shall be deposited as miscellaneous funds in the Treasury and made available subject to appropriation, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill.

Subsection (e) directs the Secretary of the Interior to convey to the South Dakota Department of Game, Fish, and Parks the non-preferential leased parcels and unleased parcels of the Blunt Reservoir and Pierre Canal to be used for mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project. The Commission would also be authorized, with the Department’s concurrence, to allow a person to exchange other land in South Dakota for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal. This subsection also reserves to the United States a perpetual easement to the land to

allow for a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal Feature.

Subsection (f) releases the United States from liability, except for damages from certain acts of negligence committed prior to the date of conveyance.

Subsection (g) provides that, during the interim period prior to the expiration of their purchase option after five years, the preferential leaseholders would be entitled to continue to lease from the Secretary of the Interior under the same terms and conditions applicable on the date of enactment. Within 180 days of enactment, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

Subsection (h) authorizes \$750,000 to be appropriated to reimburse the Secretary for expenses incurred in implementing this Act, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this Act, not to exceed 10 percent of the cost of each transaction conducted under this Act.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 3, 2003.*

Hon. PETE V. DOMENICI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 426, the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Julie Middleton.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

#### *S. 426—Blunt Reservoir and Pierre Canal Land Conveyance Act of 2003*

Summary: S. 426 would direct the Secretary of the Interior to transfer title to the lands and facilities that make up the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal in South Dakota to the state. During the five years following enactment, S. 426 would allow any preferential leaseholder to purchase the parcel that is the subject of their lease for cash or on an installment basis. After five years, the bill would direct the Secretary to transfer any remaining parcels to South Dakota. S. 426 would authorize the appropriation of \$750,000 to implement those provisions. The bill also would authorize the appropriation of payments to South Dakota equal to the amount of any proceeds from sales to leaseholders.

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 426 would cost about \$1.2 million in 2004 and negligible amounts in subsequent years. For Congressional scorekeeping purposes, CBO estimates that enacting S. 426 would increase direct spending by about \$100,000 in 2004. Enacting the bill would also lead to about \$450,000 in collections from asset sales, but those proceeds would not count for purposes of Congressional scorekeeping because completing the asset sales would ultimately result in a net cost to the federal government.

S. 426 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would benefit the state of South Dakota, and any costs would be incurred voluntarily.

**Estimated cost to the Federal Government:** Subject to the appropriation of the authorized amounts, CBO estimates that implementing S. 426 would cost \$1.2 million in 2004 and insignificant amounts in subsequent years. CBO estimates that enactment of the bill would increase offsetting receipts by about \$500,000 in 2004 from land sales and would increase direct spending by about \$100,000 in 2004 for loan subsidies for the installment purchases of certain land parcels in the affected area.

#### *Spending subject to appropriation*

S. 426 would direct the Secretary of the Interior to transfer title to the lands and facilities that make up the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal to South Dakota. During the five years following enactment, S. 426 would allow any preferential leaseholder to purchase the parcel that is the subject of their lease. After such time has expired, the bill would direct the Secretary to transfer any remaining preferential lease parcels to the state. S. 426 would authorize the appropriation of \$750,000 to implement those provisions.

The bill also would authorize the appropriation of federal proceeds to South Dakota from sales to leaseholders. We estimate that by selling parcels to preferential leaseholders, the federal government would collect nearly \$500,000 in 2004 and smaller amounts in each of the next four years. Thus, subsequent appropriations of that amount to South Dakota would cost about \$500,000 in 2004.

#### *Direct spending*

To purchase their leased lands under the bill, preferential leaseholders would pay the value of such lands appraised for agricultural purposes only (i.e., not including recreational value). The bill would allow leaseholders to pay 10 percent less than the appraised value if they pay up front in a lump sum. The bill also would allow those leaseholders whose parcels are valued above \$10,000 to pay in installments over 30 years with an annual interest rate of 3 percent. Based on information from the Bureau of Reclamation, we expect that over the five-year period, nearly 30 leaseholders would purchase the parcels valued at less than \$10,000. We estimate that the government would receive about \$30,000 a year from such sales.

Because of the favorable terms under the bill, we expect that all 17 of the leaseholders with parcels valued above \$10,000 would purchase those parcels on an installment basis. Based on informa-

tion from the Bureau of Reclamation, CBO estimates that the government would collect about \$450,000 from the sale of those more-valuable leases in 2004. However, those proceeds would not count for Congressional scorekeeping purposes because CBO estimates that the sales would result in a net cost to the government (on a present-value basis). Scorekeeping guideline #15 states that if an asset sale would result in a net financial cost to the government, the proceeds from such a sale “shall not be scored” under the Congressional Budget Act.

The Federal Credit Reform Act of 1990 requires that agencies record the subsidy cost of financing arrangements in the year the assets are sold if payment is deferred for more than 90 days. In effect, S. 426 would allow the Secretary to issue direct loans to the 17 leaseholders with parcels valued about \$10,000. Based on the experience of similar loan programs within the Department of Agriculture, CBO expects that very few purchasers would default on their payments. Because the purchasers would pay annual interest of 3 percent, however, CBO estimates that the loans under S. 426 would have a subsidy cost of about \$100,000, or 25 percent of the purchase price. Under credit reform procedures, this cost would be recorded in 2004.

Intergovernmental and private-sector impact: S. 426 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit the state of South Dakota, and any costs would be incurred voluntarily.

Estimate prepared by: Federal Costs: Mark Hadley and Julie Middleton; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 426. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 426, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On February 26, 2003, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 426. These reports had not been received at the time the report on S. 426 was filed.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 426, as ordered reported.

